

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

## **An Act To Further Amend the Sex Offender Registration and Notification Act of 1999**

**Emergency preamble.** Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** in order for the Legislature to respond to the Law Court's concerns raised regarding the constitutionality of certain provisions of the Sex Offender Registration and Notification Act of 1999 prior to the March 31, 2010 expiration of the stay of the Law Court's decision in State v. Letalien, this legislation must take effect as expeditiously as possible; and

**Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

**Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 34-A MRSA §11202-A,** as enacted by PL 2009, c. 365, Pt. B, §3 and affected by §22, is amended to read:

### **§ 11202-A.Exception**

**1. Exception.** Notwithstanding section 11202, a person sentenced ~~on or after January 1, 1982 and prior to June 30, 1992~~ is not required to register under this chapter if that person submits to the bureau, in a form to be determined by the bureau, documentation to establish the following:

A. The person was sentenced in the State on or after January 1, 1982 and prior to June 30, 1992 and was finally discharged from the correctional system prior to September 1, 1998 at least 10 years prior to submitting documentation to the bureau under this section; the person was sentenced in the State on or after June 30, 1992 and prior to September 18, 1999 and was finally discharged from the correctional system at least 10 years prior to submitting documentation to the bureau under this section; the person was sentenced in another jurisdiction, was finally discharged from the correctional system at least 10 years prior to submitting documentation to the bureau under this section and has been in compliance with the registration duties as a resident required under subchapter 2 since September 12, 2009; or the person was sentenced in the State on or after September 18, 1999 and prior to July 30, 2004 for a violation of former Title 17A, section 252 and was finally discharged from the correctional system at least 10 years prior to submitting documentation to the bureau under this section. For purposes of this paragraph, "finally discharged from the correctional system" includes completion of probation;

B. The person's convictions do not include more than one Class A sex offense or sexually violent offense or more than one conviction in another jurisdiction for an offense that contains the essential elements of a Class A sex offense or sexually violent offense, whether or not the convictions occurred on the same date;

C. At the time of the offense, the person had not been previously sentenced in this State as an adult or as a juvenile sentenced as an adult for a sex offense or a sexually violent offense;

D. At the time of the offense, the person had not been previously sentenced in another jurisdiction as an adult or as a juvenile sentenced as an adult for an offense that contains the essential elements of a sex offense or a sexually violent offense;

E. Subsequent to the ~~commission of conviction for the~~ sex offense or sexually violent offense, the person has not been convicted of a crime under Title 17 or Title 17A in this State that is punishable by imprisonment for a term of one year or more; and

F. Subsequent to the ~~commission of conviction for the~~ sex offense or sexually violent offense, the person has not been convicted under the laws of any other jurisdiction of a crime that is punishable by a term of imprisonment exceeding one year. This paragraph does not include a crime under the laws of another jurisdiction that is classified by the laws of that jurisdiction as a misdemeanor and is punishable by a term of imprisonment of 2 years or less.

**2. Duty continues.** A person's duty to register continues until the bureau determines that the documentation meets the requirements of this section and any rules adopted by the bureau.

**3. Costs.** A person who submits documentation under this section is responsible for the costs of any criminal history record checks required.

**4. Restoration of registration status.** The registration obligation of a person sentenced ~~on or~~ after January 1, 1982 and prior to June 30, 1992 that is discharged pursuant to this section is restored by any subsequent conviction for a crime described in subsection 1, paragraph E or F.

**5. Appeal.** A decision to deny an application for relief under this section is a final agency action, which may be appealed by filing a petition for review pursuant to Title 5, chapter 375, subchapter 7.

**6. Subsequent offenses and consideration of prior offense.** If application for relief is approved and a duty to register is extinguished under this section, and the person is subsequently sentenced for a new sex offense or sexually violent offense, the prior offense for which the duty to register was extinguished must be counted as a prior offense for the purposes of classifying the person as a lifetime registrant.

**Sec. 2. 34-A MRSA §11222, sub-§4**, as amended by PL 2005, c. 423, §17, is further amended to read:

**4. Verification for persons sentenced on or after September 18, 1999.** During the period a registrant sentenced on or after September 18, 1999 is required to register, the bureau shall require the registrant to verify registration information including domicile, residence, mailing address, place of

employment and college or school being attended. The bureau shall verify the registration information of a 10-year registrant on each anniversary of the 10-year registrant's initial registration date and shall verify a lifetime registrant's registration information every 90 days after that lifetime registrant's initial registration date. Verification of the registration information of a 10-year registrant or lifetime registrant occurs as set out in this subsection.

A. At least 10 days prior to the required verification date, the bureau shall mail a nonforwardable verification form to the last reported mailing address of the registrant. The verification form is deemed received 3 days after mailing unless returned by postal authorities.

C. The registrant shall take the completed verification form and a current photograph of the registrant to the law enforcement agency having jurisdiction within 5 days of receipt of the form.

D. The law enforcement agency having jurisdiction shall verify the registrant's identity, have the registrant sign the verification form, take the registrant's fingerprints, complete the law enforcement portion of the verification form and immediately forward the fingerprints, photograph and form to the bureau.

**Sec. 3. 34-A MRSA §11222, sub-§4-A** is enacted to read:

**4-A. Verification for person sentenced on or after January 1, 1982 and prior to September 18, 1999 who is a 10-year registrant.** During the period a 10-year registrant sentenced on or after January 1, 1982 and prior to September 18, 1999 is required to register, the bureau shall require the 10-year registrant to verify registration information including domicile, residence, mailing address, place of employment and college or school being attended. The bureau shall verify the registration information of a 10-year registrant in writing as provided by the bureau on each anniversary of the 10-year registrant's initial registration date and once every 5 years in person. Verification of the registration information of a 10-year registrant occurs as set out in this subsection.

A. At least 10 days prior to the required verification date, the bureau shall mail a nonforwardable verification form to the last reported mailing address of the 10-year registrant. The verification form is deemed received 3 days after mailing unless returned by postal authorities.

B. The 10-year registrant shall mail to the bureau the completed written verification form and a current photograph on each anniversary of the 10-year registrant's initial registration date within 5 days of receipt of the form, except as provided in paragraph C.

C. In lieu of mailing the completed verification form under paragraph B, the 10-year registrant shall take the completed verification form and a current photograph of the 10-year registrant to the law enforcement agency having jurisdiction once every 5 years after the anniversary of the 10-year registrant's initial registration or, if there is a reason to believe the offender's appearance has changed significantly, the law enforcement agency having jurisdiction or the bureau may instruct the 10-year registrant in writing:

(1) To appear in person at the law enforcement agency having jurisdiction with a current photograph or to allow a photograph to be taken; or

(2) If authorized in writing by the law enforcement agency having jurisdiction for the bureau, to submit a new photograph without appearing in person.

D. Whenever in-person verification is mandated pursuant to paragraph C, the law enforcement agency having jurisdiction shall verify the 10-year registrant's identity, have the 10-year registrant sign the verification form, take the registrant's fingerprints, complete the law enforcement portion of the verification form and immediately forward the fingerprints, photograph and form to the bureau.

**Sec. 4. 34-A MRSA §11222, sub-§4-B** is enacted to read:

**4-B. Verification for person sentenced on or after January 1, 1982 and prior to September 18, 1999 who is a lifetime registrant.** During the period a lifetime registrant sentenced on or after January 1, 1982 and prior to September 18, 1999 is required to register, the bureau shall require the lifetime registrant to verify registration information including domicile, residence, mailing address, place of employment and college or school being attended. The bureau shall verify the registration information of a lifetime registrant in writing as provided by the bureau every 90 days after that lifetime registrant's initial registration date and once every 5 years in person. Verification of the registration information of a lifetime registrant occurs as set out in this subsection.

A. At least 10 days prior to the required verification date, the bureau shall mail a nonforwardable verification form to the last reported mailing address of the lifetime registrant. The verification form is deemed received 3 days after mailing unless returned by postal authorities.

B. The lifetime registrant shall mail to the bureau the completed written verification form and a current photograph every 90 days after that lifetime registrant's initial registration date within 5 days of receipt of the form, except as provided in paragraph C.

C. In lieu of mailing the completed verification form under paragraph B, the lifetime registrant shall take the completed verification form and a current photograph of the lifetime registrant to the law enforcement agency having jurisdiction once every 5 years after the anniversary of the lifetime registrant's initial registration or, if there is a reason to believe the lifetime registrant's appearance has changed significantly, the law enforcement agency having jurisdiction or the bureau may instruct the lifetime registrant in writing:

(1) To appear in person at the law enforcement agency having jurisdiction with a current photograph or to allow a photograph to be taken; or

(2) If authorized in writing by the law enforcement agency having jurisdiction for the bureau, to submit a new photograph without appearing in person.

D. Whenever in-person verification is mandated pursuant to paragraph C, the law enforcement agency having jurisdiction shall verify the lifetime registrant's identity, have the lifetime registrant sign the verification form, take the lifetime registrant's fingerprints, complete the law enforcement portion of the verification form and immediately forward the fingerprints, photograph and form to the bureau.

**Sec. 5. 34-A MRSA §11225-A, sub-§1**, as enacted by PL 2005, c. 423, §22, is amended to read:

**1. Ten-year registrant convicted and sentenced in State.** The following provisions apply to a 10-year registrant convicted and sentenced in this State.

~~A. A 10-year registrant sentenced in this State on or after January 1, 1982 whose duty to register must be exercised pursuant to section 11222, subsection 1A shall register for a period of 10 years. The 10-year period commences from the date the person in fact initially registers once the legal duty arises under section 11222, subsection 1A.~~

~~B. A 10-year registrant sentenced in this State on or after June 30, 1992 whose duty to register must be exercised pursuant to section 11222, subsection 2A or 2B or a 10-year registrant sentenced in this State on or after January 1, 1982 whose duty to register must be exercised pursuant to section 11222, subsection 2C shall register for a period of 10 years. The 10-year period is calculated as follows.~~

(1) If the 10-year registrant was sentenced prior to September 18, 1999 to a wholly suspended sentence with probation or administrative release or to a punishment alternative not involving imprisonment, the 10-year period is treated as having begun at the time the person commenced an actual execution of the wholly suspended sentence or at the time of sentence imposition when no punishment alternative involving imprisonment was imposed, unless the court ordered a stay of execution, in which event the 10-year period is treated as having begun at the termination of the stay.

(2) If the 10-year registrant was sentenced prior to September 18, 1999 to a straight term of imprisonment or to a split sentence, the 10-year period is treated as having begun at the time of discharge or conditional release.

(3) If the 10-year registrant was committed under Title 15, section 103 prior to September 18, 1999, the 10-year period is treated as having begun at the time of discharge or conditional release under Title 15, section 104A.

(4) If the 10-year ~~registrant's~~registrant was sentenced prior to September 18, 1999 and the person's duty to register has not yet been triggered, the 10-year period commences upon registration by the person in compliance with section 11222, subsection 1A, paragraph A, B or C.

(5) If the 10-year registrant was sentenced on or after September 18, 1999, the 10-year period commences from the date the person in fact initially registers.

**Emergency clause.** In view of the emergency cited in the preamble, this legislation takes effect when approved.

## SUMMARY

On December 22, 2009, the Maine Law Court issued its decision in State v. Letalien, 2009 ME 130. The Law Court held that "the retroactive application of the lifetime registration requirement and quarterly in-person verification procedures of SORNA of 1999 to offenders originally sentenced subject to SORA of 1991 and SORNA of 1995, without, at a minimum, affording those offenders any opportunity to ever be relieved of the duty as was permitted under those laws, is ... an unconstitutional ex post facto law...." The Law Court stayed the mandate of the decision until March 31, 2010 in order to provide the Legislature the opportunity to deal with the issue. This bill of the Joint Standing Committee on Criminal Justice and Public Safety responds to the constitutional concern raised in Letalien in 2 ways.

First, it amends the in-person verification provisions to conform with those of Alaska that were found constitutional by the United States Supreme Court in Smith v. Doe, 538 U.S. 84 (2003). Maine's ex post facto clause is interpreted consistently with the United States Constitution, so this bill provides for verification for persons retroactively required to register as lifetime registrants that is consistent with the Alaska law found constitutional in Smith v. Doe. In particular, the bill amends the verification of registry information for persons sentenced on or after January 1, 1982 and prior to September 18, 1999. For 10-year registrants sentenced during that time period, the Department of Public Safety, State Bureau of Identification shall verify the registration information in writing as provided by the bureau on each anniversary of the registrant's initial registration date and once every 5 years in person. For lifetime registrants sentenced in that time period, the bureau shall verify the registration information in writing as provided by the bureau every 90 days after that lifetime registrant's initial registration date and once every 5 years in person. The bill also provides that if there is a reason to believe the offender's appearance has changed significantly, the law enforcement agency or the bureau may instruct the offender in writing to appear in person at the registration agency with a current photograph or to allow a photograph to be taken or, if authorized in writing by the law enforcement agency or the bureau, to submit a new photograph without appearing in person.

Second, the bill expands the provisions to allow certain registrants to be relieved of their duty to register on application and proof of legislatively established factors. An additional waiver scheme that authorized registrants to petition the court for relief from the duty to register was not included in the bill at this juncture due to a substantial fiscal note from the judicial branch, but may be considered again in the next legislative session.

Specifically, the bill expands the existing exception that was enacted pursuant to Public Law 2009, chapter 365 to allow the opportunity for additional registrants to provide documentation to the State Bureau of Identification to determine if they qualify for relief from the duty to register. First, it allows persons sentenced in Maine on or after June 30, 1992 and prior to September 18, 1999 who were finally discharged from the correctional system at least 10 years prior to applying for relief and who meet the other existing factors of the Maine Revised Statutes, Title 34A, section 11202A to apply. Second, it allows

persons sentenced in Maine on or after September 18, 1999 and prior to July 30, 2004 for a violation of former Title 17A, section 252 who were finally discharged at least 10 years prior to applying for relief and who meet the other existing factors of Title 34A, section 11202A to apply. The former crime of rape was added to the list of registerable offenses pursuant to Public Law 2003, chapter 711, so people convicted of rape prior to that law, which became effective on July 30, 2004, were also retroactively made lifetime registrants. Finally, it allows persons sentenced in another jurisdiction who were finally discharged from the correctional system at least 10 years prior to applying for relief, who have been in full compliance with the registration duties as a resident required under Title 34A, section 11202A, subsection 2 since September 12, 2009 and who meet the other existing criteria of Title 34A, section 11202A to apply. The intent of the amendments to Title 34A, section 11202A is to make the relief process available to Maine residents with out-of-state convictions, but not to encourage convicted offenders to move to Maine solely to evade registration requirements in their home states or in Maine. Accordingly, the legislation sets a date of September 12, 2009, the original effective date of this statutory exception, as the deadline by which persons with out-of-state convictions that require registration must be residents in compliance with Maine's Sex Offender Registration and Notification Act of 1999 in order to qualify. This reduces the likelihood that persons will move to Maine primarily to take advantage of the exception. It also reduces the likelihood of factual disputes over residency status, as the determination depends on registration and verification paperwork that the registrant must already have filed with the State Bureau of Identification as part of the registration and verification process, and in which the registrant would have identified his or her own status. It decreases the burden on both the State Bureau of Identification and the applicant regarding obtaining documentation to establish residency for the purposes of the exception. Finally, it significantly reduces the likelihood of applicants fabricating evidence of residency for the purposes of the exception.

The bill also changes the calculation of the 10-year registrant start times in Title 34A, section 11225A to make consistent the calculation of the 10-year registration period imposed retroactively for 10-year registrants sentenced January 1, 1982 to June 30, 1992 with that for 10-year registrants sentenced June 30, 1992 to September 17, 1999.